

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

REV. CARPEAH R. NYENЕКOR,

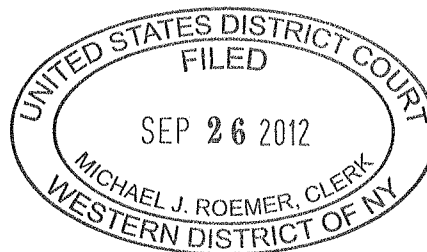
Petitioner,

-v-

MICHAEL PHILLIPS, et al.,

Respondents.

12-CV-0097Sr
ORDER



Petitioner filed, *pro se*, a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging his detention at the Buffalo Federal Detention Facility pending completion of immigration removal proceedings. Petitioner claimed that he was denied bond by an Immigration Judge during the removal proceedings. (Docket No. 1.) Respondents filed a response and memorandum of law in response to the petition noting that at the time petitioner filed the petition the immigration removal proceedings were still pending because, although petitioner had been ordered by an Immigration Judge to be deportable as a criminal alien under Section 237(a)(2) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1227(a)(2), he had filed an appeal from the order of removal with the Board of Immigration Appeals ("BIA"). On April 24 2012, the BIA denied petitioner's appeal and petitioner became subject to post-final order detention under INA, § 241, 8 U.S.C. § 1231.¹ (Docket No. 6, Respondents Memorandum of Law, at 2-3.)

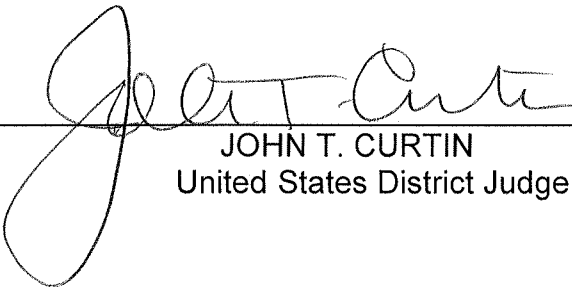
¹Pursuant to 8 U.S.C. § 1231(a)(1)-(2), petitioner was subject to mandatory detention for a ninety-day statutory removal period, and pursuant to *Zavydas v. Davis*, 533 U.S. 678 (2001), petitioner's detention pending removal from the United States is presumed reasonable for the six-month period following entry of the final order of removal.

Petitioner now moves to withdraw the petition on the basis that the court has not ruled on his motion for appointment of counsel and his petition is now moot. (Docket No. 8.) Regardless of whether the motion for appointment of counsel is relevant to the mootness *vel non* of the petition, *see n. 1, supra*, the Court, pursuant to Fed.R.Civ.P. 41(a)(2), grants petitioner's motion to withdraw the petition and the petition is dismissed without prejudice.

IT IS HEREBY ORDERED that petitioner's motion to withdraw the petition is granted and the petition is dismissed without prejudice.

SO ORDERED.

DATED: 9/26, 2012
Buffalo, New York



JOHN T. CURTIN
United States District Judge